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21 **UNITED STATES DISTRICT COURT**
22 **DISTRICT OF NEVADA**

23 FitnessAge Services, Inc., a Nevada corporation,
24 Plaintiff,
25 vs.

26 Polar Electro, Inc., a New York corporation,
27 Defendant.

CASE NO. 2:11-CV-01444-ECR-GWF

STIPULATED PROTECTIVE ORDER

28 Pursuant to Local Rule LR 16.1-4, FitnessAge Services, Inc. (“Plaintiff” or
“FitnessAge”) and Polar Electro, Inc. (“Defendant” or “Polar”) (collectively “the parties”),
stipulate that the following Protective Order should be entered in this case.

Disclosure and discovery activity in this action are likely to involve production of
confidential, proprietary, or private information for which special protection from public

STIPULATED PROTECTIVE ORDER

disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4 below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Local Rule LR 10-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

STIPULATED PROTECTIVE ORDER

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
2 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness
3 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
4 competitor, and (3) at the time of retention, is not currently anticipated to become an employee
5 of a Party or of a Party's competitor.

6 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
7 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
8 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
9 less restrictive means.

10 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
11 extremely sensitive "Confidential Information or Items" representing computer code and
12 associated comments and revision histories, formulas, engineering specifications, or schematics
13 that define or otherwise describe in detail the algorithms or structure of software or hardware
14 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
15 serious harm that could not be avoided by less restrictive means.

16 2.11 Non-Party: any natural person, partnership, corporation, association, or other
17 legal entity not named as a Party to this action.

18 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
19 action but are retained to represent or advise a party to this action and have appeared in this
20 action on behalf of that party or are attorneys affiliated with a law firm (and its support staffs)
21 that has appeared on behalf of that party.

22 2.13 Party: any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
25 Material in this action.

26 2.15 Professional Vendors: persons or entities that provide litigation support services
27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
28

1 organizing, storing, or retrieving data in any form or medium) and their employees and
 2 subcontractors.

3 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
 4 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
 5 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

6 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 7 Producing Party.

8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only Protected
 10 Material (as defined above), but also (1) any information copied or extracted from Protected
 11 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
 12 testimony, conversations, or presentations by Parties or their Counsel that might reveal
 13 Protected Material. However, the protections conferred by this Stipulation and Order do not
 14 cover the following information: (a) any information that is in the public domain at the time of
 15 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
 16 Receiving Party as a result of publication not involving a violation of this Order, including
 17 becoming part of the public record through trial or otherwise; and (b) any information known to
 18 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
 19 disclosure from a source who obtained the information lawfully and under no obligation of
 20 confidentiality to the Designating Party. Any use of Protected Material at trial shall be
 21 governed by a separate agreement or order.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations imposed by
 24 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 25 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 26 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
 27 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
 28

1 action, including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
5 Party or Non-Party that designates information or items for protection under this Order must
6 take care to limit any such designation to specific material that qualifies under the appropriate
7 standards. To the extent it is practical to do so, the Designating Party must designate for
8 protection only those parts of material, documents, items, or oral or written communications
9 that qualify – so that other portions of the material, documents, items, or communications for
10 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber or retard the case development process or to impose unnecessary
14 expenses and burdens on other parties) expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it designated
16 for protection do not qualify for protection at all or do not qualify for the level of protection
17 initially asserted, that Designating Party must promptly notify all other Parties that it is
18 withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
20 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
21 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly
22 so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents, but
25 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
26 Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'
27 EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains
28 protected material. If only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
 2 making appropriate markings in the margins) and must specify, for each portion, the level of
 3 protection being asserted.

4 A Party or Non-Party that makes original documents or materials available for
 5 inspection need not designate them for protection until after the inspecting Party has indicated
 6 which material it would like copied and produced. During the inspection and before the
 7 designation, all of the material made available for inspection shall be deemed “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified
 9 the documents it wants copied and produced, the Producing Party must determine which
 10 documents, or portions thereof, qualify for protection under this Order. Then, before producing
 11 the specified documents, the Producing Party must affix the appropriate legend
 12 (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
 13 “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected
 14 Material. If only a portion or portions of the material on a page qualifies for protection, the
 15 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 16 markings in the margins) and must specify, for each portion, the level of protection being
 17 asserted.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 19 Designating Party identify on the record, before the close of the deposition, hearing, or other
 20 proceeding, all protected testimony and specify the level of protection being asserted. When it
 21 is impractical to identify separately each portion of testimony that is entitled to protection and it
 22 appears that substantial portions of the testimony may qualify for protection, the Designating
 23 Party may invoke on the record (before the deposition, hearing, or other proceeding is
 24 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
 25 which protection is sought and to specify the level of protection being asserted. Only those
 26 portions of the testimony that are appropriately designated for protection within the 21 days
 27 shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a
 28 Designating Party may specify, at the deposition or up to 21 days afterwards if that period is

properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of

1 a designation, the Receiving Party must make reasonable efforts to assure that the material is
2 treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
11 process by providing written notice of each designation it is challenging and describing the
12 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
13 written notice must recite that the challenge to confidentiality is being made in accordance with
14 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
15 challenge in good faith and must begin the process by conferring directly (in voice to voice
16 dialogue; other forms of communication are not sufficient) within 14 days of the date of service
17 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
18 confidentiality designation was not proper and must give the Designating Party an opportunity
19 to review the designated material, to reconsider the circumstances, and, if no change in
20 designation is offered, to explain the basis for the chosen designation. A Challenging Party may
21 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
22 process first or establishes that the Designating Party is unwilling to participate in the meet and
23 confer process in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality within
26 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
27 and confer process will not resolve their dispute, whichever is earlier. Each such motion must
28 be accompanied by a competent declaration affirming that the movant has complied with the

1 meet and confer requirements imposed in the preceding paragraph. Failure by the Designating
 2 Party to make such a motion including the required declaration within 21 days (or 14 days, if
 3 applicable) shall automatically waive the confidentiality designation for each challenged
 4 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
 5 designation at any time if there is good cause for doing so, including a challenge to the
 6 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
 7 this provision must be accompanied by a competent declaration affirming that the movant has
 8 complied with the meet and confer requirements imposed by the preceding paragraph.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating
 10 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 11 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 12 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 13 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 14 material in question the level of protection to which it is entitled under the Producing Party's
 15 designation until the court rules on the challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
 18 or produced by another Party or by a Non-Party in connection with this case only for
 19 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 20 disclosed only to the categories of persons and under the conditions described in this Order.
 21 When the litigation has been terminated, a Receiving Party must comply with the provisions of
 22 section 15 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location and
 24 in a secure manner that ensures that access is limited to the persons authorized under this
 25 Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 28 disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
 2 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
 3 the information for this litigation and who have signed the "Acknowledgment and Agreement
 4 to Be Bound" that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the Receiving
 6 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
 7 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 9 reasonably necessary for this litigation and who have signed the "Acknowledgment and
 10 Agreement to Be Bound" (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, and Professional
 13 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
 14 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
 16 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
 17 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
 18 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must
 19 be separately bound by the court reporter and may not be disclosed to anyone except as
 20 permitted under this Stipulated Protective Order.

21 (g) the author or recipient of a document containing the information or a custodian or
 22 other person who otherwise possessed or knew the information.

23 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
 24 and "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless otherwise
 25 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 26 disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
 27 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;¹

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROSECUTION BAR

Absent written consent from the Producing Party, any individual who receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information shall not be involved in the prosecution of patents or patent applications relating to systems for determining an individual's physiological age, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly

¹ This Order contemplates that Designated House Counsel shall not have access to any information or items designated "HIGHLY CONFIDENTIAL – SOURCE CODE."

1 drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.²
 2 To avoid any doubt, “prosecution” as used in this paragraph does not include representing a
 3 party challenging a patent before a domestic or foreign agency (including, but not limited to, a
 4 reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar
 5 shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 6 “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the affected
 7 individual and shall end two (2) years after final termination of this action.

8 9. SOURCE CODE

9 (a) To the extent production of source code becomes necessary in this case, a
 10 Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE
 11 CODE” if it comprises or includes confidential, proprietary or trade secret source code.

12 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
 13 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
 14 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in
 15 Paragraph 8, and may be disclosed only to the individuals to whom “HIGHLY
 16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth
 17 in Paragraph 7.3.

18 (c) Any source code produced in discovery shall be made available for inspection,
 19 in a format allowing it to be reasonably reviewed and searched, during normal business hours
 20 or at other mutually agreeable times, at an office of the Producing Party’s counsel or another
 21 mutually agreed upon location.

22 (d) The Receiving Party may request paper copies of limited portions of source code
 23 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
 24 other papers, or for deposition or trial, but shall not request paper copies for the purpose of
 25 reviewing the source code other than electronically as set forth in paragraph (c) in the first
 26 instance. The Producing Party shall provide all such source code in paper form, including bates
 27 numbers and the label “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Producing Party

28 ² Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 may challenge the amount of source code requested in hard copy form pursuant to the dispute
 2 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is
 3 the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of
 4 dispute resolution.

5 (e) The Receiving Party shall maintain a record of any individual who has inspected any
 6 portion of the source code in electronic or paper form. The Receiving Party shall maintain all
 7 paper copies of any printed portions of the source code in a secured, locked area. The
 8 Receiving Party shall not create any electronic or other images of the paper copies and shall not
 9 convert any of the information contained in the paper copies into any electronic format. The
 10 Receiving Party shall only make additional paper copies if such additional copies are (1)
 11 necessary to prepare court filings, pleadings, or other papers (including a testifying expert’s
 12 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its
 13 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the
 14 end of each day and must not be given to or left with a court reporter or any other unauthorized
 15 individual.

16 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 17 OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other litigation that
 19 compels disclosure of any information or items designated in this action as
 20 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
 21 “HIGHLY CONFIDENTIAL – SOURCE CODE,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall include a
 23 copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
 25 other litigation that some or all of the material covered by the subpoena or order is subject to
 26 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
 27 and
 28

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.³

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.⁴ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of

⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of
 2 a communication or information covered by the attorney-client privilege or work product
 3 protection, the parties may incorporate their agreement in the stipulated protective order
 4 submitted to the court.

5 14. MISCELLANEOUS

6 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 7 seek its modification by the court in the future.

8 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 9 Order no Party waives any right it otherwise would have to object to disclosing or producing
 10 any information or item on any ground not addressed in this Stipulated Protective Order.
 11 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
 12 material covered by this Protective Order.

13 14.3 Export Control. Disclosure of Protected Material shall be subject to all
 14 applicable laws and regulations relating to the export of technical data contained in such
 15 Protected Material, including the release of such technical data to foreign persons or nationals
 16 in the United States or elsewhere. The Producing Party shall be responsible for identifying any
 17 such controlled technical data, and the Receiving Party shall take measures necessary to ensure
 18 compliance.

19 14.4 Filing Protected Material. Without written permission from the Designating
 20 Party or a court order secured after appropriate notice to all interested persons, a Party may not
 21 file in the public record in this action any Protected Material. A Party that seeks to file under
 22 seal any Protected Material must comply with Local Rule LR 10-5. Protected Material may
 23 only be filed under seal pursuant to a court order authorizing the sealing of the specific
 24 Protected Material at issue.

25 15. FINAL DISPOSITION

26 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 27 Receiving Party must return all Protected Material to the Producing Party or destroy such
 28 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,

1 compilations, summaries, and any other format reproducing or capturing any of the Protected
 2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
 3 submit a written certification to the Producing Party (and, if not the same person or entity, to
 4 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
 5 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
 6 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
 7 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
 8 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
 9 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 10 reports, attorney work product, and consultant and expert work product, even if such materials
 11 contain Protected Material. Any such archival copies that contain or constitute Protected
 12 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
 13 Notwithstanding the terms of this Section, the Receiving Party shall be under no obligation to
 14 delete Protected Material from securely stored backup media.

15
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 17
 18 /s/ Califf T. Cooper
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Attorneys for Defendant

IT IS SO ORDERED.


United States Magistrate Judge

DATED: February 21, 2012

STIPULATED PROTECTIVE ORDER

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the District of Nevada on _____ [date] in the case of FitnessAge Services, Inc. v. Polar Electro, Inc.; Case No. 2:11-CV-01444-ECR-GWF. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my Nevada agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

STIPULATED PROTECTIVE ORDER